IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/09/2005

Coram

The Hon'ble Mr. MARKANDEY KATJU, Chief Justice
and
The Hon'ble Mr. Justice A.KULASEKARAN

W.P. No.28886 of 2004
and W.P.No. 25937/05
and
W.P.M.P. Nos.35081/04 & 28341/05

W.P. No.28886 of 2004:-

V.Natarajan ... Petitioner

-Vs-

Deputy Inspector General
of Police,
Thanjavur Range,
Thanjavur. ... Respondents

W.P. No.25937 of 2005:-

P. Elangovan ... Petitioner

vs.

1. The Home Secretary,
The Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. The Director General of Police,
Tamilnadu Police Head Quarters,
Kamarajar Salai,
Chennai-600 004.

3. The Deputy Inspector General
of Police,
Thanjavur Division,
Thanjavur.

4. The Superintendent of Police,
Nagapattinam District,

Nagapattinam.

5. V. Natarjan. ... Respondents

Petitions under Article 226 of the Constitution of India for the issuance of Writ of Certiorari and writ of mandamus respectively as stated therein.

!For Petitionerr in WP.28886/04 : Mrs.N.Fidelia

For Offl. Respondents : Mr.V.Ragupathy,
Govt. Pleader.
For Petr.
in WP.25937/05 : Mr.R.Gandhi,
Sr. Counsel for
Mr.T.P.Senthil Kumar.

:COMMON ORDER
(Passed by the Honourable The Chief Justice)

Heard learned counsel for the parties. We have two connected Writ Petitions, namely, W.P. No.28886 of 2004 and W.P. No.25937 of 2005, and we are deciding both the Writ Petitions together by this common order.

2. In W.P. No.28886 of 2004, V.Natarajan, the petitioner, who is working as Inspector of Police in Tamil Nadu Police, was charged for offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. The VII Additional Sessions Court, Chennai, after trial, by Judgment dated 30.06.2004 rendered in C.C. No.1 6 of 2002, convicted and sentenced him to undergo rigorous imprisonment for one year and also imposed a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for another 3 months, for the offence under Section 7 of the Prevention of Corruption Act. He was also convicted for the offence under Section 13(1)(d) read with 13(2) of the said Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for another three moths. The sentences were ordered to run concurrently.

3. We have perused the judgment of the VII Additional Special Judge, Chennai dated 30.06.2004 by which accused V.Natarajan was convicted. The said judgment runs into over 30 pages. The charge against V. Natarajan was that while he was attached to Prohibition Enforcement Wing, Triplicane Area, Chennai he threatened Murugan, who was working as a Cashier in Senthil Wine Shop situate at Door No.43, Egmore High Road, Chennai, to pay mamool (bribe) of Rs.4500/- every month, and threatened that if bribe (monthly mamool) is not given, a case against the wine shop of acting against Tamil Nadu Prohibition Act and Rules will be filed and seal will be put on the shop. On 3.12.2001 at 6.00 p.m. V.Natarajan, Inspector, received Rs.4500/- from Murugan as bribe illegally.
4. The Commissioner of Police, Chennai City, Thiru.Vijayakumar gave

sanction for the prosecution of V.Natarajan and the other co-accused. P.W.3/Muthubalan, working as Assistant in the Office of the Director of Technical Education, Guindy, Chennai gave evidence that he and his Office Superintendent witness Krishnamurthy were approached by Anti Corruption Officials who came to their office and told them that they are going to trap a person for receiving bribe and requested him to be a witness. He agreed to the same and went to the Anti Corruption Office at Adyar. Inspector Vedarathnam attached to the Anti Corruption Office gave notes worth Rs.4500/- (four Rs.500 notes and twenty five Rs.100 notes) to the cashier of Senthil Wine Shop namely, Murugan. Phenolphtalein powder was applied to the notes, and they were drenched in the Sodium Carbonate Solution in two glass tumblers, and these notes were given to Murugan.

5. Cashier Murugan tendered the aforesaid money to V.Natarajan, who asked him to give it to the co-accused/T.Udhayasuriyan, First Grade Constable. V.Natarajan was asked to drench his fingers of both hands in the two glass tumblers containing sodium carbonate solution and when he did so the solution turned orange in colour. The solution was sent for chemical analysis, which was found to contain Phenolpthalein applied on the notes.

6. The entire evidence in the Criminal Court has been considered in great detail by the trial Court in its judgment dated 26.07.2004, and the trial Court, on appreciation of the evidence, both oral and documentary, has come to a definite conclusion that the accused V. Natarajan and co-accused are guilty of taking bribe. The trial Court has held that the charges against both the accused are proved beyond doubt and accordingly, it sentenced the accused.

7. An appeal is pending against that judgment in this Court, and hence we are not commenting on the merits of the findings of the trial Court as that has to be done by the appellate court hearing the appeal.

8. Pursuant to the said conviction, show cause notice dated 18.09.200 4 was issued to the said V.Natarjan to show cause as to why he should not be dismissed from service as per rule 3(c)(i)(1) of TNPSS (D&A) Rules 1955 read with PSO 66, Vol.I. Challenging the said show cause notice, he filed W.P. No.28886 of 2004, in which, a learned single Judge of this Court passed an order of interim stay on 08.10.2004.

9. In our opinion, the interim order was wholly uncalled for and the said order is hereby vacated. It is preposterous and shocking that a police Inspector, who has been found guilty of corruption, should be allowed to continue in service, even if he has filed an appeal against his coviction. To allow such a person to continue in service would demoralize the honest policemen and would be an offence against the whole of society. The Police is expected to protect the people and not to loot the people. We cannot understand as to how a person, who has been held guilty of corruption, can be allowed to continue in service. We cannot countenance any such practice or approve of it. Hence, we hereby vacate the interim order granted by the learned single Judge in WPMP No.35081 of 2004 in WP No.28886 of 2004.

10. It is well settled that ordinarily no writ lies against a show cause notice, vide N.Kailasam v. Bar Council of India, (2005) 2 MLJ 44 , Special Director v. Mohd.Ghulam Ghaus, AIR 2004 SC 1467, Executive Engineer v. R.K.Singh, JT (1995) 8 SC 331, etc. Hence, we dismiss W. P. No.28886 of 2004 as not maintainable.

11. As regards W.P. No.25937 of 2005, it has been contended by the learned counsel for respondent No.5 that no Public Interest Litigation (PIL) lies in any service matter and for this proposition, he relied on various decisions of the Supreme Court, the latest one being (200 4) 3 SCC 363 (B.Singh (Dr.) vs. Union of India), which has followed the earlier decisions in Duryodhan Sahu (Dr) V. Jitendra Kumar Mishra (1988) 7 SCC 273, etc.

12. No doubt, it has been held by the Supreme Court in these decisions that PIL should not be entertained in service matters. But, every decision has to be seen in the context in which it has been made and it cannot be read as a precedent in a mechanical manner. For example, suppose a Government employee has been promoted, then only the person, who is adversely affected by that promotion order, can challenge it, and it is not that a PIL can be filed in that connection by a person or body not personally affected. Similarly, PIL cannot be filed in service matters regarding dismissal, compulsory retirement etc. and only those who are personally affected can challenge the same. However, that principle cannot apply in cases which adversely affect the entire society and the entire public administration. In our opinion, the above decisions, in the cases of B.Singh,Duryodhan Sahu (both cited supra) etc. are distinguishable and will not apply to a case where the continuation of the police Inspector, who has been found guilty of corruption, is bound to have adverse effect on society as a whole. If such an official convicted for corruption is allowed to continue in service it will shake the public administration and the people s confidence in the administration, and will also demoralize the honest policemen.

13. As observed by the Supreme Court in Bharat Petroleum Corporation Limited Vs. N.R.Vairamani, 2005 (1) L.W. 209 (Vide paragraphs 9 to 12)
Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd v. Horton, (1951) AC 737 at p.761), Lord Mac Dermot Observed: -
The matter cannot, of course, be settled merely be treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Co., (1970) 2 All ER 294, Lord Reid said, " Lord Atkin's speech. is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J, as if it were an Act of Parliament." And, in Herrington v. British Railways Board, (1972) 2 WLR 537) Lord Morris said: -
" There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus: -
" Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive"
"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

14. Similarly in Gangadhar Bohora v. State of Orissa, 2002 AIR SCW 4 271, the Supreme Court observed: -
" So far as the observation made in Kamaksha Rai v. State of Bihar,19 99 AIR SCW 4173, it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particulars case."
"The context in which the judgment was delivered, the object and the nature of the statute regarding which the judgment was delivered and other factors have all to be examined before applying a judgment as a precedent, otherwise the law will become artificial. Hence, we are of the clear opinion that the decisions cited by the learned senior counsel for the respondents are distinguishable and not applicable to the facts of the present case."

15. More over, it is well settled that under Article 226 of the Constitution of India, a writ can even be issued suo motu by this Court. Hence, even assuming that the Writ Petitioner P.Elangoven had no right to file W.P. No.25937 of 2005, this Court can suo motu issue a writ, where the public interest so requires as held by a Division Bench of the Allahabad High Court in AIR 1949 Allahabad 675 {Abida Begam vs. Rent Control and Eviction Officer, Lucknow and another: vide paragraph No.27. Similarly, in S.Barrow vs. State of U.P. (AIR 1958 Allahabad 154), in paragraph No.18, it has been observed as

follows:-

" ..... Article 226 of the Constitution does not confine the powers of Courts to issuing prerogative writs in cases where a party makes an application for the purpose and we think the words are wide enough to authorise the High Court to quash an order suo moto. ..."
We fully agree with the aforesaid two decisions of the Allahabad High Court.

16. This is a fit case for exercise of the suo motu power under Article 226 of the Constitution of India to issue a writ to direct that V.Natarajan, Inspector of Police, Prohibition and Enforcement Wing, Triplicane, Chennai, shall be placed under suspension forthwith and he shall not be reinstated, until and unless his conviction by the criminal court is reversed in the criminal appeal filed by him, and we accordingly pass such order. No doubt the sentence of imprisonment in the judgment of the criminal Court dated 30.06.2004 was suspended in Criminal Appeal No. 957 of 2004 by order of a learned single Judge of this Court dated 26.7.2004. However it is well settled that merely because the sentence and conviction by the trial court have been suspended by the appellate court, this does not mean that the conviction has been washed off or obliterated. {see S.Vasundara v. Canara Bank {(1 997) 9 SCC 523}; Deputy Director of Collegiate Education (Admn.) v. S. Nagoor Meera {(1995) 3 SCC 377}, vide para-10).

17. For the reasons given above, we allow W.P. No.25937 of 2005 and direct that respondent No.5 V.Natarajan be placed under suspension by the Government forthwith. We further direct that departmental proceedings be also initiated against him in connection with the same charges, since it is well settled that even if an employee is acquitted in a criminal case he can be punished in the departmental proceedings on the same charge vide Allahabad District Co-operative Bank Ltd., v. Vidhya Varidh Mishra, (2004) 6 SCC 482 (vide paragraph 12) and Secretary, Ministry of Home Affairs and Another v. Tahir Ali Khan Tyagi, JT 2002 (Supp. 1) SC 520 (vide paragraph 6).

18. We are fully conscious of the fact that ordinarily it is for the State Government or concerned authority to suspend an official and/ or chargesheet him, and ordinarily this Court is reluctant to assume functions which belong to the executive. However, in exceptional cases, such as the present one, the Court can do so, since the public interest demands it strongly. It is for this reason that we are passing the aforesaid order.

19. Accordingly, W.P. No.25937 of 2005 is allowed while W.P. No.28886 of 2004 is dismissed. Interim stay granted in 35081 of 2004 is vacated. W.P.M.P. No.28341 of 2005 is closed.

Index: Yes
Internet: Yes

Ji/pv.

To

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